IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 238 of 2000.

Date of Decision: 15-12-2006.

Devinder Singh Kalta. **Petitioner.**

Versus

State of H. P. and others. **Respondents.**

Coram

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice Surinder Singh Thakur , J.

Whether approved for reporting[1]?

For the petitioner : Mr. Tarlok Chauhan, Advocate.

For the respondent No.1 and 2. Mr. M. S. Chandel, Advocate General with Mr. R. M. Bisht, Dy. Advocate General for Respondents No.1 and 2.

For the respondent No. 3: Mr. R. Maniktala, Advocate.

For respondents No. 4 to 12: Mr. N.K. Thakur, Advocate.

SURINDER SINGH, J. (oral).

Succinctly stated, the facts giving rise to this petition are that admittedly, the petitioner was selected as a Kanungo candidate vide Office Order dated January 23, 1984. It is averred that he was placed at Sr. No. 7 in seniority but two persons who were above him did not join and one selected candidate had expired, therefore, the petitioner was assigned serial number 4 in the select list. It is ventilated that to his utter surprise, he was shown at Sr. No. 13 in the seniority list issued on September 3, issued on September 3, 1988, wrongly and illegally. Thus, feeling aggrieved by the said action, petitioner made a representation,

[1] Whether reporters of the Local papers are allowed to see the judgment?

Annexure-PB dated November 11, 1988, to respondent no. 2. When the respondent No.2 did not decide the representation despite reminder, the petitioner was constrained to file O.A. No. 572 of 1989, Annexure-PC, before the learned H.P. State Administrative Tribunal.

The respondents had offered strong resistance to the Original Application, aforesaid and according to them, the inter-se seniority list of the petitioner and all other private respondents was drawn after completing the requisite training/qualifying Kanungo Examination and obtaining efficiency certificate in accordance with the provisions laid down in para 2.11 of Chapter-2 of H.P. Land Records Manual, after final acceptance as Kanungo candidates of the District. It was also pleaded that the seniority list circulated, at the time of this selection to undergo the training, was only for the purpose of tentative selection and not for final acceptance as Kanungo Candidates and further, that in para 8 of the provisional selection order, Annexure-R2, it was made crystal clear that the inter-se seniority of the candidates would be fixed on the basis of their merit and satisfactory performance of their duties during the training. It was also the case of the respondents that the petitioner was to obtain minimum 180 marks out of 300 marks but he could only obtain 179 marks and was declared qualified by giving him one grace mark, as is evident from Annexure-R1. Further that the seniority list, of the direct Kanungo candidates for appointment as Kanungo, was drawn in accordance with the relevant rules, after completion of training/qualifying the Kanungo examination and obtaining efficiency certificate from the Director of Land Records, as aforesaid.

The respondent No.3 in his separate reply additionally contended that the inter se seniority was required to be fixed on merit basis after satisfactory performance of their duties by such candidates. It is alleged

that the stand taken by petitioner was fully misconceived. Further, the determination of the relative seniority in respect of the direct recruits based upon the notification dated July 27, 1972 is also wrong as these instructions have been changed from time to time. Therefore, the seniority was required to be determined on the basis of the appointment order. The said respondent also contended that he had obtained 215 marks out of 300 and he was better placed than the petitioner. Since the inter-se seniority was not to be determined on the basis of initial appointment, the Original Application was rightly dismissed by the learned H.P. Administrative Tribunal.

We have heard the learned counsel for the parties and have carefully gone through the record.

Shri Tarlok Chauhan, learned counsel for the petitioner, has urged that the conditions of service of the petitioner and the private respondents are governed by the “H. P. Kanungo Service Rules, 1951” (In short to be referred as Rules), which clearly demonstrates that there was no stipulation in these rules as was incorporated in appointment letter Annexure-RA dated January 23, 1984 as there could not have been two modes for assigning/governing the seniority in the same cadre. Further, that vide order Annexure-PJ, as referred in the rejoinder, the seniority of Shri Govind Ram, who was a direct recruit Kanungo, was determined on the basis of the selection at the time of initial appointment. Shri Chauhan has further led us through the relevant provisions of the rules and contended that Executive instructions cannot dehors the statutory rules. Hence the impugned order passed by the learned H. P. Administrative Tribunal is against the law and thus deserve to be set aside.

On the other hand, learned Advocate General and Shri Rajnish Maniktala, learned counsel for respondent No.3, have supported the impugned order passed by the learned H.P. Administrative Tribunal as legally correct. Shri N.K. Thakur, learned counsel appearing for the private respondents, has vehemently argued before us that the inter-se seniority with respect to the direct recruits was determined after completing the requisite training after qualifying the Kanungo examination and obtaining efficiency certificate as per para 2.11 of the H.P. Land Records Manual. He laid his main stress to condition No. 8 and 9 of the appointment order, Annexure-PA, and argued that these conditions were accepted by the petitioner, therefore, the rules in question are not relevant, thus petitioner is estopped to raise any plea contrary to the aforesaid conditions. Hence the impugned order was legal and factually sustainable.

We have given our thoughtful considerations to the rival contentions of the parties. We are absolutely clear in our mind that there could not be two rules for fixing the seniority inter-se the candidates. By now it is well established that when ever there is a conflict between the Statutory Rules and the Executive Instructions, Statutory rules are to be preferred and given precedence. However, where the rules aforesaid are silent, it can be supplemented by issuing adequate Executive instructions which, of course, should not be contradictory or in conflict and opposed to the statutory rules or the rules of natural justice. In the instant case, admittedly, the petitioner and the private respondents are direct recruits and are similarly situated. A perusal of the rules, Annexure-P1 clearly demonstrates that the Kanungos are governed by the aforesaid rules and therefore, selection of the petitioner and private respondents being direct recruits, has been made in accordance with

Rule 6 (c) (ii) of the said Rules. The method of appointment clearly provides that such appointment shall be made by selection from amongst the accepted kanungo candidates other than 'patwaris' who are in possession of a 'certificate of efficiency', from the Director of Land Records. Whereas, the office order dated January 23, 1984 regarding the appointment of the petitioner, inter alia, contained the following conditions:

> " 8. The inter seniority of the candidate shall be fixed on the basis of their merits and satisfactory performance of their duties training.
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> 9. On successful completion of training and qualifying departmental examination he shall be eligible for appointment as Kanungo anywhere in any government department/semi government organization./public undertakings subject to the availability of posts in the pay scale of 48-880 and may be posted in any part of Himachal Pradesh.
>
> Provided that no candidate will be appointed as Kanungo unless he is in possession of efficiency certificate issued by the director of land records, H.P. Shimla".

Taking a cue from the above conditions, the respondents have laid stress that the petitioner was bound by these conditions as having been accepted and that the final seniority list was required to be prepared on the basis of merit and as per the above conditions. But in our considered opinion, these conditions are opposed to rule 12 which provides the method of seniority. Rule 12 of the Rules aforesaid, can be extracted as under:

> "12. The seniority of the members of the service shall be determined by the date of their substantive appointment provided that if two or more members are appointed substantively on the same date, their seniority shall be determined according to the orders in which their names are entered by the Director of Land Records in the list of Kanungo candidates maintained in his office".
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> (emphasis supplied)

As already said, there cannot be different criteria for determining the seniority in the same cadre, one as per the rules and another by applying the Executive instructions. If there is any such contradictory or contrary provision existing, that is essentially required to be ignored and the statutory rules shall have the prevalence. Therefore, we are not in agreement with the arguments advanced by the learned counsel for the respondents that conditions No. 8 and 9 would govern the seniority in the instant case more specifically when the statutory rules clearly occupies the field. The only mode to fix the seniority inter-se the petitioner and private respondents is Rule 12 ibid. Thus, keeping in view the related rules, in our opinion, the seniority of the Kanungo candidates shall be determined by the same date when the petitioner and private respondents were appointed substantively as per the orders in which their names as Kanungo candidates are entered by the Director Land Records in the list of Kanungo candidates maintained in his office. The acceptance of office order dated January 13, 1984, which lays down the conditions No. 8 and 9 above, by the petitioner will not stop him to claim seniority as per rules as applicable at that time.

Keeping in view the above discussion and reasons, we hereby quash and set aside the office order Annexure-PA dated September 3, 1988 and the order dated September 29, 1999 passed by the learned H.P. Administrative Tribunal in O.A. No. 572 of 1989, Annexure-PH, and direct the respondents No.1 and 2 to redraw the seniority of the petitioner and the private respondents as per Rule 12 above. The petition is accordingly allowed.

No costs.

(Deepak Gupta), J.

(Surinder Singh), J.

December 15, 2006.
(BM)